

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF ALABAMA  
JASPER DIVISION**

**PERNELL JOHNSON; )  
PLAINTIFF )  
v. )           **CASE NO.: 14-2257**  
**WALKER COUNTY, ALABAMA, )  
et al.; )  
DEFENDANTS. )****

**MOTION TO STRIKE**

COMES NOW, the Plaintiff Pernell Johnson, by and through his undersigned counsels of record, and files this Motion to Strike and states as follows:

- 1) That Defendants Walker County, Tirey, Underwood and McCluskey filed a Motion to Dismiss on January 5, 2015.
- 2) That in Defendants' Motion to Dismiss, Defendants assert that "Discovery will reveal that Plaintiff was receiving his medications (supplied by the Defendants) for his heart and blood pressure issues but was non-compliant in taking his medications. The facts will show that his stroke and medical issues were caused by his own hands and not by any of the Defendants." (Doc. 14 footnote 1).
- 3) That said footnote contains inadmissible hearsay relayed by counsel for Defendants in a dispositive pleading to be reviewed by this Court.

- 4) That a court's review on a motion to dismiss is "limited to the four corners of the complaint." *St. George v. Pinellas County*, 285 F.3d 1334, 1337 (11th Cir.2002). A court may consider only the complaint itself and any documents referred to in the complaint which are central to the claims. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir.1997) (per curiam).
- 5) That in Esch v. Universal Pictures Co., No. 6:09-CV-02258-JEO, 2010 WL 5600989, at \*7 (N.D. Ala. Nov. 2, 2010), the Court determined that in considering a Motion to Dismiss, "articulated, conclusory impressions relayed and articulated in paragraph nine of an affidavit are inadmissible hearsay" and should not be considered by the Court.
- 6) That Defendants' articulated and conclusory opinions contained in the Motion to Dismiss are inadmissible hearsay and are due to be stricken.

Respectfully submitted,

/s/ Alyson Hood Rains  
ALYSON HOOD RAINS (HOO041)

/s/ Brett M Bloomston  
BRETT M. BLOOMSTON (BLO009)

/s/ Joseph J. Basgier III.  
JOSEPH J. BASGIER III (BAS019)

Bloomston & Basgier  
2151 Highland Avenue Ste. 310  
Birmingham, AL 35205  
(205) 212-9700

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of January, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record in this case.

/s/ Alyson Hood Rains

OF COUNSEL